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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TRAVIS WILLIAM COLEMAN,

11 Petitioner,

12 v.

13 PATRICK GLEBE,

14 Respondent.

CASE NO. C14-0050JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 **I. INTRODUCTION**

16 This matter comes before the court on the report and recommendation of United
17 States Magistrate Judge Mary Alice Theiler (R&R (Dkt. # 35)), and Petitioner Travis
18 William Coleman's objections thereto (Obj. (Dkt. # 41)). Having carefully reviewed all
19 of the foregoing, along with all other relevant documents, and the governing law, the
20 court ADOPTS the Report and Recommendation (Dkt. # 35) and DISMISSES with
21 prejudice Mr. Coleman's 28 U.S.C. § 2254 petition for writ of habeas corpus (Dkt. # 3).

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II. BACKGROUND

The jury convicted Mr. Coleman of two counts of molestation, acquitted him of a third, and did not reach a verdict on a charge of rape. (Admin Record (Dkt. # 31) Ex. 7 at 1-2.) Mr. Coleman was sentenced to an indeterminate term of 78 months to life in total confinement, followed by community custody. (*Id.* Ex. 1.) He was confined to the Stafford Creek Corrections Center at the time he filed his petition, was later released, and is currently under community custody. (*Id.* Ex. 2.)

Mr. Coleman filed a direct appeal to the Washington Court of Appeals. (*Id.* Ex. 4.) The Washington Court of Appeals held that the trial court erred in its procedure for sealing jury questionnaires, but the Court of Appeals did not find that the error was structural. (*Id.* Ex. 7.) The Court of Appeals remanded the matter for reconsideration of the sealing order. (*Id.*) The Court of Appeals otherwise affirmed the trial court and rejected Mr. Coleman's claims. (*Id.*) Mr. Coleman did not seek review of the Washington Supreme Court, and the Court of Appeals issued its mandate on September 25, 2009. (*Id.* Ex. 8.)

On remand, the trial court held a hearing on the issue remanded by the Court of Appeals. (*Id.* Ex. 9.) The trial court modified its prior order sealing the jury questionnaires and directed that the jurors' names and numbers be redacted and the redacted questionnaires be filed on the docket. (*Id.*) Mr. Coleman then appealed this order. (*Id.* Ex. 10.) The Washington State Court of Appeals affirmed the trial court's order on remand. (*Id.* Ex. 3.) Mr. Coleman petitioned for review, but the Washington

1 Supreme Court denied his petition. (*Id.* Exs. 13, 14.) The Court of Appeals issued its
2 mandate on June 26, 2013. (*Id.* Ex. 15.)

3 In the meantime, Mr. Coleman filed a personal restraint petition with the
4 Washington State Court of Appeals. (*Id.* Ex. 16.) The Court of Appeals dismissed the
5 petition, and the Washington Supreme Court denied Mr. Coleman's petition for
6 discretionary review. (*Id.* Exs. 19, 20, 21.) Mr. Coleman moved to modify the ruling,
7 but the Supreme Court denied his motion without comment on February 5, 2014. (*Id.*
8 Exs. 22, 23.) The Court of Appeals issued its certificate of finality on February 21, 2014.

9 Mr. Coleman filed his present 28 U.S.C. § 2254 petition for writ of habeas corpus
10 in this court January 1, 2014. (Petition (Dkt. ## 1, 3).) In his petition, Mr. Coleman
11 raised three grounds for relief: (1) his Sixth Amendment right to a public trial was denied
12 when the trial court sealed juror questionnaires without first conducting an inquiry into
13 Mr. Coleman's public trial rights, (2) his Sixth Amendment right to effective assistance
14 of counsel was denied when his attorney failed to object to numerous improper remarks
15 made by the prosecuting attorney during closing arguments, and (3) his Fifth and Sixth
16 Amendment rights were violated due to the prosecution's failure to provide possible
17 exculpatory evidence when it failed provide a mirror image of a hard drive seized from
18 Mr. Coleman's residence which was alleged to contain "footprints of child pornography."
19 (*Id.* at 3.)

20 On April 1, 2015, Magistrate Judge Theiler issued a report recommending that the
21 court deny each of Mr. Coleman's grounds for habeas relief and dismiss his petition with
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prejudice. (*See generally* R&R at 5-29.) On May 22, 2015, Mr. Coleman filed his objections to Magistrate Judge Theiler's report and recommendation. (*See* Obj.)

III. ANALYSIS

A. Standard of Review

A district court has jurisdiction to review a Magistrate Judge's report and recommendation on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The court reviews de novo those portions of the report and recommendation to which specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). "The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise." *Id.* When no objections are filed, the court need not review de novo the report and recommendation. *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). Because Mr. Coleman is proceeding *pro se*, this court must interpret his petition and objections liberally. *See Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003).

B. Mr. Coleman's Habeas Petition

As noted above, Mr. Coleman raised three issues in his habeas petition. (*See generally* Petition.) Magistrate Judge Theiler rejected all three issues and recommended that the court deny Mr. Coleman's habeas petition. (*See generally* R&R.) Mr. Coleman

1 objected to Magistrate Judge Theiler's recommendations with respect to each of his three
2 issues. (*See generally* Obj.) Mr. Coleman, however, fails to raise any new issue or
3 argument in his objections that was not previously addressed by Magistrate Judge Theiler
4 in her report and recommendation. The court has thoroughly reviewed both Magistrate
5 Judge Theiler's report and recommendation and Mr. Coleman's objections and is
6 convinced that Magistrate Judge Theiler's recommendations are sound. Nevertheless,
7 the court briefly addresses each of Mr. Coleman's objections.

8 **1. Right to a Public Trial**

9 Mr. Coleman argues that the state trial court violated his Sixth Amendment right
10 to a public trial when the court sealed juror questionnaires without first conducting a
11 proper inquiry. (Petition at 5-6.) Magistrate Judge Theiler found that because the trial
12 judge did not order the sealing of the juror questionnaires until after the completion of
13 voir dire and jury selection, and because jurors were questioned in open court on the
14 content of their questionnaires, Mr. Coleman failed to make a showing that the public
15 was, in fact, precluded from the viewing the questionnaires at any point prior to jury
16 selection. (R&R at 14-15.) Further, Magistrate Judge Theiler found that the trial court
17 had met its obligations on remand when it held a hearing and made findings to support
18 the redaction of juror names and numbers from the questionnaires. (*Id.* at 15-16.)

19 Mr. Coleman objects to Magistrate Judge Theiler's report and recommendation by
20 arguing that the trial court could not fairly consider the issue of sealing the juror
21 questionnaires on remand after his trial had already occurred. (Obj. at 1-2.) Mr.
22 Coleman, however, does not explain why this is so. Mr. Coleman also challenges

1 Magistrate Judge Theiler's conclusion that Mr. Coleman failed to make a showing that
2 the questionnaires were in fact not available during voir dire. (*Id.* at 2-3.) Mr. Coleman
3 cites to a statement by the trial court indicating that juror questionnaires "will be sealed."
4 (*Id.* at 3.) Mr. Coleman, however, does not cite to any portion of the record to support his
5 argument and in fact appears to concede that (whatever the initial intent of the trial court)
6 the questionnaires were not in fact sealed for three days. (*See id.* ("This fact the judge
7 waited three days to officially seal the questionnaires means nothing where the court's
8 intention was apparent up front as it was in this case."))

9 The court has carefully reviewed Mr. Coleman's objections to Magistrate Judge
10 Theiler's recommendation that the court reject Mr. Coleman's argument that his Sixth
11 Amendment right to a public trial was infringed. The court agrees with Magistrate Judge
12 Theiler's recommendation and that the standards set forth in *Waller v. Georgia*, 467 U.S.
13 39, 45-46 (1984) and *United States v. Sherlock*, 962 F.2d 1349, 1356-57 (9th Cir. 1989)
14 concerning voir dire and the Sixth Amendment right to a public trial were ultimately
15 satisfied in this case. Accordingly, the court concludes that Mr. Coleman has not
16 demonstrated that the state court's adjudication of his claim was contrary to or an
17 unreasonable application of clearly established federal law or that Mr. Coleman has
18 demonstrated any violation of his Sixth Amendment right to a public trial.

19 **2. Ineffective Assistance of Counsel**

20 Mr. Coleman argues that he was denied his Sixth Amendment right to effective
21 assistance of counsel when his attorney failed to object to improper remarks of the
22 prosecutor during closing argument, including impermissible vouching, disparagement of

1 defense counsel, and other inflammatory remarks. (Petition at 6-8.) Magistrate Judge
2 Theiler analyzed the prosecutor's conduct under the two-pronged test found in *Strickland*
3 *v. Washington*, 466 U.S. 668, 687-94 (1984), and found that Mr. Coleman had not
4 demonstrated error under either prong. (R&R at 21-26.)

5 Mr. Coleman objects to Magistrate Judge Theiler's recommendation that the court
6 reject his second ground for habeas relief but raises no issues not previously addressed by
7 Magistrate Judge Theiler. (*See* Obj. at 4-6.) After a thorough review of the record,
8 Magistrate Judge Theiler's report and recommendation, and Mr. Coleman's objection
9 thereto, the court remains convinced that Magistrate Judge Theiler's recommendation
10 that the court deny Mr. Coleman's claim for habeas relief on grounds of ineffective
11 assistance of counsel is correct. The court does not find that Mr. Coleman's counsel's
12 performance fell below an objective standard of reasonableness or that, but for the
13 alleged failures of Mr. Coleman's counsel, the outcome of the proceedings would have
14 been different. Because the state court's adjudication of this claim was neither contrary
15 to, nor an unreasonable application of clearly established federal law, the court adopts the
16 recommendation of Magistrate Judge Theiler and denies habeas relief to Mr. Coleman on
17 his claim for ineffective assistance of counsel.

18 **3. Failure to Provide Exculpatory Evidence**

19 Mr. Coleman's third ground for habeas relief challenges the failure of the
20 prosecution to provide defense counsel with a mirror image of the hard drive seized from
21 Mr. Coleman's residence which was alleged to contain "'footprints of child
22 pornography.'" (Petition at 8-9.) Instead, Mr. Coleman states that his attorney received

1 only a printout of a single directory contained on the hard drive. (*Id.* at 9.) Magistrate
2 Judge Theiler found that the record did not reflect a *Brady* violation¹ but rather that the
3 prosecutor had provided the defense with an opportunity to obtain a copy of the hard
4 drive, which the defense did not pursue. (R&R at 27.) As a result, Magistrate Judge
5 Theiler recommended that the court deny Mr. Coleman's third claim for habeas relief.
6 (*Id.* at 28-29.)

7 Mr. Coleman objects to Magistrate Judge Theiler's recommendation on grounds
8 that his counsel was unable to afford the cost of providing an empty hard drive for
9 purposes of making a mirror image copy of the hard drive of Mr. Coleman's computer.
10 (Obj. at 7.) Mr. Coleman, however, did not object to the prosecution's position, move to
11 compel production, or provide the court with an opportunity to rule on an appropriate
12 allocation of costs. (*See* Admin. Record Ex. 19 at 5.) Given this record, the court agrees
13 with Magistrate Judge Theiler's conclusion that Mr. Coleman has failed to demonstrate a
14 *Brady* violation. Because Mr. Coleman fails to demonstrate that the state court's decision
15 rejecting his claim of a discovery violation was contrary to or an unreasonable
16 application of clearly established federal law, the court adopts the recommendation of
17 Magistrate Judge Theiler and denies habeas relief to Mr. Coleman on his claim for an
18 alleged failure to provide *Brady* material.

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21 ¹ *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that the Constitution requires
22 the prosecution to disclose evidence to the defense that is both favorable to the accused and
material to either guilt or punishment).

4. Certificate of Appealability

Finally, the court also concurs with Magistrate Judge Theiler's recommendation that the court deny Mr. Coleman a certificate of appealability. Mr. Coleman may appeal this court's dismissal of his 28 U.S.C. § 2254 petition for writ of habeas corpus only after receiving a certificate of appealability from either a district or circuit judge. The court may issue a certificate of appealability only if the petitioner has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Mr. Coleman meets this standard only if he can demonstrate that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The court agrees with Magistrate Judge Theiler that Mr. Coleman has failed to make this showing. (*See* R&R at 29.) Accordingly, the court adopts Magistrate Judge Theiler's recommendation and denies Mr. Coleman a certificate of appealability.

IV. CONCLUSION

Based on the foregoing, the court (1) ADOPTS the report and recommendation of Magistrate Judge Theiler (Dkt. # 35); (2) DISMISSES Mr. Coleman's 28 U.S.C. § 2254 petition for writ of habeas corpus (Dkt. # 3); (3) DENIES issuance of a certificate of

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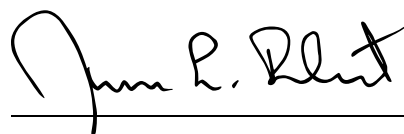
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1 appealability; and (4) DIRECTS the clerk to send copies of this order to Mr. Coleman, to
2 counsel for Respondent, and to Magistrate Judge Theiler.

3 Dated this 10th day of July, 2015.

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6 JAMES L. ROBART
7 United States District Judge
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